

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HASAN SHAREEF,)	
)	Civil Action No. 18 – 1494
Plaintiff,)	
)	
v.)	Magistrate Judge Lisa Pupo Lenihan
)	
CAPTAIN MOORE, <i>et al.</i> ,)	
)	
Defendants.)	
)	

MEMORANDUM ORDER

Pending before the Court is Plaintiff’s Motion requesting that this case be stayed and held in abeyance until the resolution of his pending criminal appeal.¹ (ECF No. 146.) Plaintiff’s request to stay this case appears to be based on an argument some of the defendants made in their motions to dismiss; specifically, that Plaintiff’s claims are barred by Heck v. Humphrey, 512 U.S. 477 (1994). Heck involved a case where the plaintiff sought damages on a claim that the defendants, acting under color of state law, had engaged in unlawful acts that led to his arrest and conviction. After finding that such a claim called into question the lawfulness of the plaintiff’s conviction or confinement, the United States Supreme Court held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff

¹ A search of The Unified Judicial System of Pennsylvania Web Portal reveals that Plaintiff has no active criminal cases currently pending in any Pennsylvania Common Pleas court. However, Plaintiff’s 2016 case out of Butler County is currently on appeal before the Pennsylvania Superior Court. The docket for that case reveals that Plaintiff pled guilty to one count of possession with intent to deliver and was found guilty of one count of illegal possession of a firearm. See Commonwealth v. Shareef, CP-10-CR-1714-2016.

must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Id. at 486-87.

The Motions to Dismiss filed by Defendant Fullerton (ECF No. 134) and Defendant Palko (ECF No. 131) agree that Plaintiff's claims are barred by Heck, but this Court does not read Plaintiff's Amended Complaint to raise any claims challenging the legality of his conviction which would be barred by Heck. Instead, Plaintiff complains that his personal property, including \$15,000.00 worth of jewelry and some legal work, were confiscated at the Butler County Jail, labelled contraband, and not returned to him.² *See, generally*, ECF No. 15. These claims do not stem from his criminal conviction for possession with intent to deliver and illegal possession of a firearm, and, as such, Plaintiff's success in this action would not in any way call into question the validity of his conviction for those charges in the criminal case that is currently on appeal. Therefore, there is no reason to stay this case. Accordingly, the following Order is now entered:

AND NOW, this 23rd day of January, 2020,

IT IS HEREBY ORDERED that the Motion to Stay and for Abeyance (ECF No. 146) is denied.

AND IT IS FURTHER ORDERED that Plaintiff's Motion for Voluntary Dismissal (ECF No. 164) is denied without prejudice. Based on what is stated in the Motion, Plaintiff's motives for wanting to voluntarily dismiss this case (and refile after the Superior Court has ruled on his appeal) stem from the same Heck v. Humphrey argument made by the defendants in their

² It appears that this may have occurred on August 20, 2018.

motions to dismiss. Given that Plaintiff's claims do not appear to be Heck barred, and that Plaintiff's request to voluntarily dismiss to this case is based on confusion brought upon by the defendants, his request will be denied without prejudice. If Plaintiff still wishes to voluntarily dismiss this case after he receives this Order then he may file another motion requesting dismissal.

A handwritten signature in black ink, appearing to read 'Lisa P. Lenihan', written over a horizontal line.

Lisa Pupo Lenihan
United States Magistrate Judge

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(Via CM/ECF electronic mail)